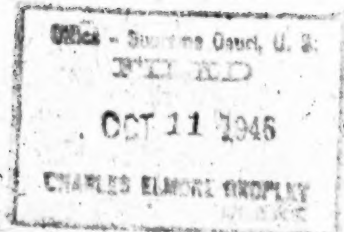


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No. 512

In the Supreme Court of the United States

OCTOBER TERM, 1946

**JAMES G. RALEY, AND THOMAS E. RALEY, TRADING
AS RALEY'S FOOD STORE, PETITIONERS**

v.

**PAUL A. PORTER, ADMINISTRATOR OF THE OFFICE
OF PRICE ADMINISTRATION**

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA**

BRIEF FOR THE RESPONDENT IN PARTIAL OPPOSITION

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OPINION BELOW

The district court did not write an opinion. The opinion of the United States Court of Appeals for the District of Columbia has not yet been officially reported (R. 16-18).

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered on June 17, 1946 (R. 19). The petition for a writ of certiorari was filed on September 16, 1946.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the Emergency Price Control Act of 1942 authorizes the delegation by the Price Administrator to District Directors, of the authority to sign and issue subpoenas for purposes of the investigative functions authorized by Section 202 of the Act.

2. Whether a subpoena issued pursuant to Section 202 and calling for the production of the respondent grocery store's "books, records and sales slips showing sales of commodities subject to price control between January 1, 1945, and the date of this subpoena [August 2, 1945]" violates the search and seizure provisions of the Fourth Amendment or the due process clause of the Fifth Amendment.

STATUTE AND REGULATION INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended, and the applicable regulations involved appear in the Appendix, *infra*, pp. 9-13.

STATEMENT

Petitioners are owners and operators of a retail grocery store under the name of Raley's Food Store at 2331 Calvert Street NW., Washington, D. C. Pursuant to the investigative authority of

Section 202 of the Emergency Price Control Act a subpoena of the Office of Price Administration was issued to and served upon petitioners on August 2, 1945 (R. 6). The subpoena was signed by Robert K. Thompson, the District Director of the Office of Price Administration (R. 5). (Delegation to Regional Administrators and District Directors of the authority to sign and issue subpoenas had been made by Revised General Order 53, *infra*, pp. 12-13). The subpoena requested the petitioners to appear before F. L. Williamson, Enforcement Attorney of the Office of Price Administration at 5601 Connecticut Avenue NW., Washington, D. C., on August 6, 1945, 10:00 A. M., and to produce at that time and place, "all books, records and sales slips showing sales of commodities subject to price control between January 1, 1945, and the date of this subpoena [August 2, 1945]" (R. 5).

Petitioners appeared by counsel at the time and place specified but refused to produce the documents requested, asserting various arguments against compliance with the subpoena. Accordingly, as authorized by Section 202 (e) of the Act, the Administrator applied to the District Court for an order enforcing compliance with the subpoenas. The application recited the foregoing facts; that the documents requested by the subpoena were, at the time of issuance thereof, deemed by the applicant to be relevant and material to

the investigation; and that they were, on information and belief, in the possession and control of the petitioners (R. 2-4).

The answer filed by petitioners asserted that the subpoena was invalid because it was signed and issued by the District Director rather than the Administrator, and because the breadth of the subpoena was such as to violate the search and seizure provisions of the Fourth Amendment and due process clause of the Fifth Amendment (R. 7-9). An affidavit by appellants asserted that their business could not be conducted if all the documents requested were turned over, because they were needed in the daily conduct of the business; that the subpoena was therefore arbitrary, oppressive and unconstitutional (R. 10-11).

At the hearing before Judge Schweinhaut, counsel for petitioners suggested that if the Administrator gave the names of particular customer accounts, petitioners would turn over those records. The Court then asked counsel for the Administrator: "Is your office in a position to do any selection at all, Mr. Walker?" Counsel replied in the negative and went on to say: "We have reason to believe there are sales that are in violation of the Act, and under those circumstances we are entitled to make an investigation, and we can't possibly determine in advance to whom those sales were made. If it would help counsel or help the respondents, we would be

glad to go in and pick up invoices for just a week at a time, photostat them, and bring them back the next day. We will do anything to help, but we do insist on our rights to the records." (R. 12-13.)

The district court entered an order on November 19, 1945, ordering appellants to comply with the subpoena at 10 o'clock A. M. on November 27, 1945 (R. 13-14). Subsequently an order was entered staying the order for compliance, pending final disposition of the appeal. The United States Court of Appeals for the District of Columbia affirmed the judgment of the district court (R. 19).

ARGUMENT

1. The Government does not oppose the petition with respect to the issue raised as to the authority under the Act to delegate the function of signing and issuing subpoenas. The Government is petitioning for certiorari in *Porter v. Mohawk Wrecking and Lumber Co.*, decided by the Circuit Court of Appeals for the Sixth Circuit, August 12, 1946 (No. 583, this Term), which conflicts with the decision below on that point.

2. The Government does oppose the petition with respect to the second of the two questions presented. There is no conflict of decision on this issue, and, as the court below recognized, the matter is clearly governed by *Oklahoma Press*

Publishing Co. v. Walling; News Printing Co. Inc. v. Walling, decided February 11, 1946, Nos. 61, 63, October Term, 1945.

The latter decisions specifically treated the objections that the Administrator did not have "evidence of violations" in advance of the use of the subpoena, and that the subpoena was too sweeping in its terms. The Court (slip sheet, at pp. 10, 15-16) stated that:

* * * The very purpose of the subpoena and of the order, as of the authorized investigation, is to discover and procure evidence, not to prove a pending charge or complaint, but upon which to make one if, in the Administrator's judgment, the facts thus discovered should justify doing so.

* * * The requirement of "probable cause, supported by oath or affirmation" literally applicable in the case of a warrant is satisfied, in that of an order for production, by the court's determination that the investigation is authorized by Congress, is for a purpose Congress can order, and the documents sought are relevant to the inquiry. Beyond this the requirement of reasonableness, including particularity in "describing the place to be searched, and the persons or things to be seized," also literally applicable to warrants, comes down to specification of the documents to be produced adequate, but not excessive, for the purposes of the relevant inquiry.

The subpoena here easily meets this test. The application for enforcement of the subpoena stated (R. 3) that "applicant, as Administrator for the Office of Price Administration, deemed that an investigation to determine whether James G. Raley and Thomas E. Raley, trading as Raley's Food Store, their agents and employees had or had not complied with the provisions of the Act and regulations issued thereunder was proper to assist him in the administration and enforcement of the Act and regulations and orders thereunder." Such an inquiry was clearly lawful under Section 202 of the Act. And the specification of documents pertaining (1) only to sales of commodities which were subject to price control, and (2) for a named eight month period of time, showed relevancy to the inquiry and adequacy of specification. Subpoenas at least as broad and covering much longer periods of time were sustained in the *Oklahoma Press Publishing and News Printing Co.* cases *supra*, as well as in *Wheeler v. United States* 226 U. S. 478; *Brown v. United States* 276 U. S. 134; *Nelson v. United States* 201 U. S. 92. Moreover, as the court below observed (R. 18), "Counsel for the Administrator assured the trial court that if it would help appellants he was ready to pick up only a week's invoices at a time, photostat them, and return them the next day. No greater concession to appellants' convenience could fairly be asked."

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be granted, but limited to the issue of the Price Administrator's authority to delegate the function of signing and issuing subpoenas.

✓ J. HOWARD McGRATH,
Solicitor General.

✓ GEORGE MONCHARSH,
Deputy Administrator for Enforcement,

✓ DAVID LONDON,
Director, Litigation Division,

SAMUEL MERMIN,
Solicitor, Litigation Division,
Office of Price Administration.

OCTOBER 1946.

APPENDIX

1. Pertinent provisions of the Emergency Price Control Act of 1942 (56 Stat. 23) as amended by the Stabilization Extension Act of 1944 (58 Stat. 632), 50 U. S. C. App., Supp. V, Sec. 901 et seq.

SEC. 201. (a) There is hereby created an Office of Price Administration, which shall be under the direction of a Price Administrator (referred to in this Act as the "Administrator"). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of \$12,000 per annum. The Administrator may, subject to the civil-service laws, appoint such employees as he deems necessary in order to carry out his functions and duties under this Act, and shall fix their compensation in accordance with the Classification Act of 1923, as amended. The Administrator may utilize the services of Federal, State, and local agencies and may utilize and establish such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Administrator in any case in any court. In the appointment, selection, classification, and promotion of officers and employees of the Office of Price Administration, no political test or qualification shall be permitted or given consideration, but all such appointments and pro-

motions shall be given and made on the basis of merit and efficiency.

(b) The principal office of the Administrator shall be in the District of Columbia, but he or any duly authorized representative may exercise any or all of his powers in any place * * *

(d) The Administrator may, from time to time, issue such regulations and orders as he may deem necessary or proper in order to carry out the purposes and provisions of this Act.

SEC. 202. (a) The Administrator is authorized to make such studies and investigations, *to conduct such hearings*,¹ and to obtain such information as he deems necessary or proper to assist him in prescribing any regulation or order under this Act, or in the administration and enforcement of this Act and regulations, orders, and price schedules thereunder.

(b) The Administrator is further authorized, by regulation or order, to require any person who is engaged in the business of dealing with any commodity, or who rents or offers for rent or acts as broker or agent for the rental of any housing accommodations, to furnish any such information under oath or affirmation or otherwise, to make and keep records and other documents, and to make reports, and he may require any such person to permit the inspection and copying of records and other documents, the inspection of inventories, and the inspection of defense-area housing accommodations. The Administrator may administer oaths and affirmations and may,

¹ Added by sec. 105 (a) of the Stabilization Extension Act of 1944.

whenever necessary, by subpoena require any such person to appear and testify or to appear and produce documents, or both, at any designated place.

(c) For the purpose of obtaining any information under subsection (a), the Administrator may by subpoena require any other person to appear and testify or to appear and produce documents, or both, at any designated place.

(d) The production of a person's documents at any place other than his place of business shall not be required under this section in any case in which, prior to the return date specified in the subpoena issued with respect thereto, such person either has furnished the Administrator with a copy of such documents (certified by such person under oath to be a true and correct copy), or has entered into a stipulation with the Administrator as to the information contained in such documents.

(e) In case of ~~contumacy~~ by, or refusal to obey a subpoena served upon, any person referred to in subsection (c), the district court for any district in which such person is found or resides or transacts business, upon application by the Administrator, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The provisions of this subsection shall also apply to any person referred to in subsection (b), and shall be in addition to the provisions of section 4 (a).

(f) Witnesses subpoenaed under this section shall be paid the same fees and mileage

as are paid witnesses in the district courts of the United States.

(g) No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (U. S. C., 1934 edition, title 49, sec. 46), shall apply with respect to any individual who specifically claims such privilege.

(h) The Administrator shall not publish or disclose any information obtained under this Act that such Administrator deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless he determines that the withholding thereof is contrary to the interest of the national defense and security.

(i) *Any person subpoenaed under this section shall have the right to make a record of his testimony and to be represented by counsel.*²

2. Provisions of Revised General Order 53 (9 F. R. 5191, May 13, 1944):

General Order 53 is amended and revised to read as follows:

Pursuant to the authority conferred upon the Administrator by the Emergency Price Control Act of 1942 as amended, the following order is prescribed:

(a) *Order delegating authority to sign and issue subpoenas and inspection requirements in rent and price investigations.—*
In connection with any investigation re-

² Added by Sec. 105 (b) of the Stabilization Extension Act of 1944.

lated to the administration or enforcement of the Emergency Price Control Act of 1942 as amended, or any regulation or order issued thereunder, the several Regional Administrators and the several District Directors of the Office of Price Administration are each authorized within their respective regions, or districts to sign and issue: (1) subpoenas requiring any person to appear and testify or to appear and produce documents, or both, at any designated place; (2) inspection requirements requiring any person who is engaged in the business of dealing with any commodity, or who rents or offers for rent or acts as broker or agent for the rental of any housing accommodation, to permit the inspection and copying of records and any other documents and to permit the inspection of inventories or defense-rental area housing accommodations, or both.

(b) The terms used herein shall have the same meaning as in the Emergency Price Control Act.

Issued and effective this 13th day of May 1944.